

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JACOB R. PRATT,

Plaintiff,

vs.

E.K. MCDANIEL et al.,

Defendants.

3:15-cv-00571-RCJ-VPC

ORDER

This is a prisoner civil rights complaint under 42 U.S.C. § 1983. The Court now screens the First Amended Complaint (“FAC”) under 28 U.S.C. § 1915A.

I. LEGAL STANDARDS

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1)–(2). Dismissal of a complaint for failure to state a claim upon which relief can be granted is provided for in Federal Rule 12(b)(6), and the court applies the same standard under § 1915A. *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012). When a court dismisses a complaint upon screening, the plaintiff should be given leave to amend the complaint with directions as to

1 curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could
2 not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

3 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
4 that fails to state a claim upon which relief can be granted. A motion to dismiss under Rule
5 12(b)(6) tests the complaint's sufficiency. *See N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578,
6 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to
7 state a claim, dismissal is appropriate only when the complaint does not give the defendant fair
8 notice of a legally cognizable claim and the grounds on which it rests. *See Bell Atl. Corp. v.*
9 *Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a
10 claim, the court will take all material allegations as true and construe them in the light most
11 favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986). The
12 court, however, is not required to accept as true allegations that are merely conclusory,
13 unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden State*
14 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action with
15 conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation is
16 plausible, not just possible. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citations omitted).

17 “Generally, a district court may not consider any material beyond the pleadings in ruling
18 on a Rule 12(b)(6) motion. However, material which is properly submitted as part of the
19 complaint may be considered.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542,
20 1555 n.19 (9th Cir. 1990) (citation omitted). Similarly, “documents whose contents are alleged
21 in a complaint and whose authenticity no party questions, but which are not physically attached
22 to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss” without
23 converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14
24 F.3d 449, 454 (9th Cir. 1994). Moreover, under Federal Rule of Evidence 201, a court may take

1 judicial notice of “matters of public record.” *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279,
2 1282 (9th Cir. 1986).

3 Finally, all or part of a complaint filed by a prisoner may be dismissed *sua sponte* if the
4 prisoner’s claims lack an arguable basis in law or in fact. This includes claims based on legal
5 conclusions that are untenable, e.g., claims against defendants who are immune from suit or
6 claims of infringement of a legal interest which clearly does not exist, as well as claims based on
7 fanciful factual allegations, e.g., fantastic or delusional scenarios. *See Neitzke v. Williams*, 490
8 U.S. 319, 327–28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

9 **II. DISCUSSION**

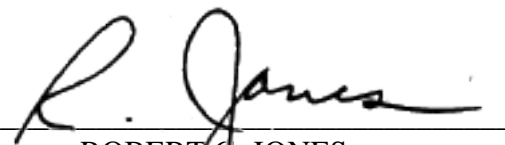
10 The Court dismissed the Complaint in its entirety upon screening, with leave to amend
11 in part. The Court dismissed the Eighth Amendment claim based on long-term solitary
12 confinement because Plaintiff had alleged only mental injury, not physical injury. *See* 42 U.S.C.
13 § 1997e(e). Plaintiff has filed the First Amended Complaint, which lists only the Eighth
14 Amendment claim. Plaintiff has still not alleged any physical injury. Moreover, the Court notes
15 that the claim is precluded, because the Court adjudicated an essentially identical claim against
16 Plaintiff in 2013. (*See* Order Adopting R&R, ECF No. 33 in Case No. 3:11-cv-604; R&R, ECF
17 No. 31 in Case No. 3:11-cv-604; Am. Compl., ECF No. 5 in Case No. 3:11-cv-604).

18 **CONCLUSION**

19 IT IS HEREBY ORDERED that the First Amended Complaint (ECF No. 5) is
20 DISMISSED, and the Clerk shall enter judgment and close the case.

21 IT IS SO ORDERED.

22 Dated this 13th day of May, 2016.

23 
24 ROBERT C. JONES
United States District Judge